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April 12, 2012

## BY ELECTRONIC COMMENT FILING SYSTEM

Ms. Marlene H. Dortch Secretary Federal Communications Commission 445 12<sup>th</sup> Street, SW Washington, D.C. 20554

Re: In the Matter of Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC For Consent To Assign Licenses; Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC For Consent To Assign Licenses, WT Docket No. 12-4

Dear Ms. Dortch:

On April 10, 2012, Steven Berry, Tim Donovan and Rebecca M. Thompson of RCA-The Competitive Carriers Association ("RCA"), along with Michael Lazarus of Telecommunications Law Professionals PLLC ("TLP"), counsel to RCA, met with Joel Rabinovitz, Virginia Metallo, and Jim Bird of the Office of General Counsel; Rick Kaplan, Linda Ray, Aleks Yankelevich, Jim Schlichting, Susan Singer, Melissa Tye, Tom Peters, Paul Murray and Joel Taubenblatt of the Wireless Telecommunications Bureau; and Marius Schwartz of the Office of Strategic Planning & Policy Analysis. The parties discussed RCA's Petition to Condition or Otherwise Deny the Verizon/SpectrumCo/Cox transactions (the "Transactions").

During the meeting, RCA stressed the numerous anti-competitive harms that would result from an unconditioned grant of the Transactions. The Transactions would assign substantial additional nationwide spectrum resources to Verizon Wireless – one of the two largest wireless carriers – which already maintains a significant warehouse of unused spectrum. In addition, the Transactions would increase the dominant power of Verizon by further cementing its dominant position in both the retail and wholesale wireless markets. Specifically, the Transactions would increase Verizon's dominant control over critical inputs needed by competitive wireless carriers to provide services to consumers: spectrum, roaming, access to interoperable handsets, and affordable wireless backhaul services. In addition, the Transactions would remove four potential competitors from the wireless marketplace, which would have had the incentives to negotiate roaming on commercially reasonable terms. Although the Cable Companies will not enter the wireless market as facilities-based providers, they will indeed be entering the

Ms. Marlene H. Dortch April 12, 2012 Page 2

market as agents to, and eventually as mobile virtual network operators of, Verizon Wireless. This will only exacerbate the dominant control exercised by Verizon Wireless. RCA also discussed the substantial value and unique benefits that would be conferred to each of the parties to the Transactions pursuant to a number of reseller/agent and joint marketing agreements that are integrated with the Transactions.

RCA also advocated that the Commission does not need to use a screen as a proxy to determine competitive harm with respect to the Transactions. Rather, the Commission, as it did in the AT&T/Qualcomm transaction, can and should determine on a national level that the Transactions pose anti-competitive harms. However, if the Commission continues to utilize a spectrum screen for an analysis of potential anti-competitive harms, it must take into account the fact that certain spectrum – such as 12.5 MHz of SMR spectrum and the 700 MHz D Block – is no longer available for near term use, and thus lower the spectrum screen to a maximum of 135 MHz. Furthermore, the Commission must incorporate its own conclusion from AT&T/Qualcomm, that spectrum over 1 GHz should be treated differently than spectrum under 1 GHz<sup>1</sup>, into any revised screen. Lastly, in transactions involving the two dominant carriers in the wireless industry, the Commission should consider a spectrum screen that takes into account the Department of Justice's recent determination that four national carriers should remain in the wireless marketplace. The Commission consistently has altered the spectrum screen, on a case-by-case basis, within the context of its review of particular transactions, and that precedent should apply to the current Transactions. Therefore, the Commission should take its prior determinations regarding the characteristics of spectrum below 1 GHz, as well as the Department of Justice's recent determinations regarding the wireless marketplace, into account when reviewing these Transactions. This analysis would not require a separate notice and comment period under the Commission's precedent.

RCA further discussed the conditions necessary for the Commission to conclude that a grant of the Transactions would be in the public interest. First, the Commission must require substantial divestitures of un-or-underused, useable spectrum within a long term evolution ("LTE") ecosystem from Verizon to competitive, operating entities that require additional spectrum immediately. Spectrum is a scarce resource, and many of RCA's members are in immediate need of spectrum resources. Verizon has admitted that it does not need additional spectrum until 2015 at a minimum (although Verizon has since altered claims surrounding its spectrum needs). In addition, Verizon currently has up to 44 MHz of unused spectrum in its spectrum warehouse.

Second, Verizon must implement interoperability requirements to ensure the availability of innovative wireless devices to competitive carriers. RCA is concerned that Verizon may potentially limit LTE deployment and device orders to spectrum uniquely situated to Verizon. The Commission must not allow another unique band class to be created pursuant to these Transactions, much like the situation that has occurred in the 700 MHz band.

Third, the Commission must ensure that affordable backhaul and special access are available to competitive carriers. The joint agreements that are integrated with the Transactions involve significant cooperation at best (and agreements to not compete, at worst) between the two major wireline providers

<sup>&</sup>lt;sup>1</sup> Application of AT&T Inc. and Qualcomm Incorporated For Consent To Assign Licenses and Authorizations, Order, WT Docket No. 11-18, FCC 11-188, ¶ 49 (rel. Dec. 22, 2011) ("AT&T/Qualcomm Order").

Ms. Marlene H. Dortch April 12, 2012 Page 3

in significant areas of the country. The Commission must make sure that access to this critical input is not limited pursuant to this newfound cooperation between prior competitors.

The Commission must also require that Verizon offer to all facilities-based carriers voice and data roaming rates no less favorable than the reseller rates offered to the Cable Companies in the Reseller Agreements, which undoubtedly represent commercially reasonable rates negotiated by sophisticated parties at arms length. Indeed, the Commission previously found that the adoption of its roaming rules "does not ... obviate the need to consider whether there is any potential roaming-related harm that might arise" from a transaction. The proposed Transactions would aggravate an already challenging roaming situation. First, the Transactions would remove from the marketplace four significant potential roaming partners who could deter Verizon Wireless' anticompetitive behavior. Second, approval of the Transactions removes any incentive Verizon Wireless had to enter into reasonable roaming arrangements for the purpose of extending its footprint.

Furthermore, the FCC should require Verizon to offer voice and data roaming rates at least as favorable to those offered to the Cable Companies pursuant to these integrated Transactions. RCA member companies continue to struggle to obtain commercially reasonable roaming rates despite the FCC's Data Roaming Order. The Cable Companies should not be rewarded with low reseller rates due to their speculation of spectrum over the past six years. Moreover, there are inherent similarities in the specific costs (and avoided costs) that go into establishing a commercially reasonable resale rate for access to one's network, and the same considerations would go into the establishment of a commercially reasonable roaming rate. Thus, an arm's length resale rate provides a good proxy for a fair roaming rate. Indeed, it is likely that any burden placed on a carrier pursuant to a resale arrangement would be greater than that imposed pursuant to a roaming arrangement. Resellers, with no facilities of their own, are more dependent on the carrier from which they are purchasing service, therefore the costs incurred are more pertinent to the resale carrier than to the roaming carrier. Most importantly, resale customers will put a greater capacity burden on the Verizon Wireless network because, unlike for roaming customers, there is no alternative home network. The Commission has, on prior occasions, found it in the public interest to place roaming conditions on a buyer of wireless spectrum to mitigate the potentially anticompetitive effects, and it must do so in the context of these Transactions.<sup>3</sup>

This ex parte notification is being filed electronically with your office pursuant to Section 1.1206 of the Commission's Rules.

<sup>&</sup>lt;sup>2</sup> AT&T/Qualcomm Order ¶ 32.

<sup>&</sup>lt;sup>3</sup> See, e.g., In the Matter of Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC, Memorandum Opinion and Order and Declaratory Ruling, WT Docket No. 08-95, 23 FCC Rcd 17444 (2008) (approving the Verizon Wireless acquisition of ALLTEL subject to roaming conditions requiring Verizon Wireless to retain certain rates offered by ALLTEL).

Ms. Marlene H. Dortch April 12, 2012 Page 4

Sincerely,

/s/ Michael Lazarus

Michael Lazarus Of TELECOMMUNICATIONS LAW PROFESSIONALS PLLC

cc (via email): Joel Rabinovitz

Linda Ray Virginia Metallo

Jim Bird

Aleks Yankelevich Jim Schlichting Susan Singer Marius Schwartz Melissa Tye Tom Peters Paul Murray Rick Kaplan Joel Taubenblatt